Prepared Statement of

John R. Bolton

Senior Vice President,
American Enterprise Institute

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Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you this morning to testify on American policy toward Libya. I have a prepared statement I would like to submit for the record, which I will summarize, and then I would be happy to answer any questions Members the Subcommittee may have.

Yesterday, trial began for two Libyan intelligence agents, accused of the heinous murder of 270 innocent civilians in the terrorist bombing of Pan Am 103 on December 21, 1988. At first glance, the prosecution's formal opening in a Scottish court sitting in the Netherlands may seem like something to celebrate, a time for rhetoric about "the rule of law" in international affairs. We will certainly hear a good deal of that from the Clinton Administration.

Unfortunately, however, the trial may actually mark the final collapse of U.S. policy toward Libya, and the end of our efforts for a real vindication of Pan Am 103's victims. This collapse embodies both a failure of will to use military force to respond to a brutal attack on our citizens, and self-imposed, potentially crippling limitations on even the narrow avenue of prosecution. While this erroneous approach started during the Bush Administration, it has been refined and perfected in the Clinton State Department. Equally repellent, we must simultaneously watch the spectacle of the Administration's pell-mell rush to resume full diplomatic relations with Libya, as soon as it can elide the inconvenient indignation of the Pan Am 103 families and their Congressional supporters.

How have we allowed such a policy to develop to full maturity? What should we have done over the past eleven years, and what should we do now to meet our obligations not only to the immediate victims of the Pan Am 103 bombing and their families, but to redeem our larger national interests, not least of which is to rescue whatever may be left of our credibility in the struggle against international terrorism?

1. We should have treated the Pan Am 103 bombing as an attack on the United States, and responded accordingly. Eleven-plus years after Pan Am 103's destruction and nine years since American and Scottish prosecutors indicted these two defendants, we are long past any realistic prospect of a proper military response. All we can do now is note our basic mistake in 1991-92 to judicialize this issue rather than to use force, in contrast with President Reagan's decision to launch air strikes against Libya for the 1986 "disco bombing" of U.S. servicemen in Germany.

Although it sounds better to unleash hard-headed prosecutors rather than weak-kneed diplomats against terrorists, there is a better option still: cold steel. Instead of responding to the bombing as if it were a domestic murder case, we should have seen this Libyan act of terror as the political-military attack that it was, and responded accordingly. The American response -- either unilaterally or with whichever allies would join us -- should have been to declare war on the terrorists, just as President Clinton purports to have done against Osama bin Laden. Then, unlike President Clinton, we should have gotten serious about it. Using military force against terrorists does not violate our legal or moral obligations. It does prevent the law from being perverted by its sworn enemies.

That is the real lesson we should have taught Gadhafi -- and all the others who are watching -- about Pan Am 103.

Instead, we have followed a debilitating diplomatic course of concessions and further restrictions on our legal system's integrity and autonomy. Every sign now points toward an imperfect trial, tilted toward acquittal. This is simply no way to deal with terrorism. Prosecutors in the Anglo-American system must prove guilt beyond a reasonable doubt, an extremely high burden of proof in any criminal trial, and even more difficult when the defendants' government has almost certainly destroyed or tampered with the evidence and witnesses.

2. The United States was wrong from the outset to take the Pan Am 103 attack to the Security Council, and to restrict ourselves to United Nations processes. In January, 1992, in Resolution 731, the Security Council took the unprecedented step of deploring Libya's failure to cooperate with international law-enforcement efforts. Two months later, in another unprecedented step, the Council's Resolution 748 imposed economic sanctions against Libya. Although hailed at the time as great victories, in fact, there was little enthusiasm for the initial condemnation of Libya, and we were barely able to gain support for the imposition of sanctions. We have been under continuous pressure since 1992 to scale back or eliminate the sanctions on any pretext, largely from Europeans who would rather trade with Moammar Gadhafi than punish him for murder. Ironically, not even Gadhafi is playing along with this charade. In an April 3 speech to the African-European summit in Cairo,

he declared that "Africa is not a ping-pong ball to be hit once by Europe, once by the U.S.," and "we do not need democracy; we need water pumps."

Unfortunately, Secretary of State Madeleine Albright's unseemly haste to achieve the normalization of relations with Libya embodies the State Department's typical deference to the European Union, combined with the Near East bureau's inevitable "clientitis" toward authoritarian regimes. Only the unlikely but powerful combination of Senators Jesse Helms and Edward Kennedy has slowed down the Department's efforts, through their resolution, recently adopted by the full Senate, cautioning against the rush toward normalization.

Libya's own actions in the months preceding the opening of trial have been openly contemptuous toward the United States and the United Kingdom. In November, 1999, for example, British authorities at London's Gatwick Airport seized a shipment of "auto parts" bound indirectly from China to Libya. Based on tips received as early as April, 1999, the British believed, correctly, that the "auto parts" were in fact Scud missile components, violating a European Union arms embargo against Libya. Nonetheless, undeterred by Libya's blatant disregard for international sanctions, the United Kingdom did normalize relations with Gadhafi, and the Clinton Administration seems intent on doing so as well. What does it take for our Administration to realize the error of policies of reconciliation with Gadhafi? In addition to Scud missile components, does it need hard evidence of nuclear, biological or chemical weapons to become concerned?

There is absolutely no warrant to move toward the normalization of American diplomatic relations with Libya, whatever the verdict of the Scottish court. How anyone could interpret Gadhafi's actions over the past several years as meriting the return of "business as usual" with his dictatorship is a mystery, except in the context of the larger drift of American policy toward fanatically anti-American governments.

From Libya, to the Sudan, to Cuba, to Iran, to North Korea, and perhaps elsewhere, Secretary Albright seems determined to restore relations with rogue regimes whose only common thread is their hatred of the United States and blatantly criminal behavior toward our citizens and our interests. Any one of these rapprochements could be seen in isolation as a simple mistake in judgment -- a failure by a State Department regional bureau -- but it is only when all of these mistakes are taken together do we see that they must be part of a deliberate Administration policy. Such a sweeping, comprehensive reversal of previous U.S. policy could only come from the Secretary's Seventh Floor suite, and that is why the Senate's recent rejection of normalization with Libya, led by this Committee, is so important.

3. The United States has made repeated, unilateral concessions to Libya that threaten the prosecution's case, and undermine our own legal system. Secretary Albright, demonstrating she is no prosecutor, has made several critical mistakes in the preparation and handling of the trial itself. These mistakes have made it unfortunately likely that the trial will simply be a piece of political theater, far

removed from the original law-enforcement scenario that its proponents envisaged a decade ago.

Initially, Secretary Albright conceded, without gaining anything in return, that the case would be tried under Scottish law, which does not provide for the death penalty for convicted murderers. While Scotland undeniably has a jurisdictional claim in the case, because eleven of its citizens died on the ground near Lockerbie, the American claim was far stronger, given that 189 of our citizens were among the 270 total fatalities. One can imagine valid reasons for deferring to the Scots, but to lose even the possibility of the death penalty without obtaining a single American objective in exchange is a stunning failure of the Secretary's diplomacy.

We can also see now that the next concession -- to hold the trial in the Netherlands, rather than in Scotland itself -- while seemingly unimportant initially, is also having adverse consequences. Leaks that the Administration would accept the Pan Am 103 trial in a third country originally appeared in July, 1998, before the terrorist bombing of our embassies in Kenya and Tanzania. Yet even after those bombings, and the subsequent American military retaliation, the Administration proceeded to give way on the Pan Am 103 trial location, which had, in the Bush Administration, been part of a "take it or leave it" proposition to Libya that the trial be held in the United States or Scotland. Secretary Albright's concession that the trial could be held in the Netherlands (symbolically, site of the International Court of Justice at The Hague) was also billed as "take it or leave it," which could only further undermine our credibility with Gadhafi and

the other closely-watching outlaw regimes. Indeed, after only a momentary hesitation, the Libyans began demanding further negotiations and concessions, just as they have done, ceaselessly, since they first faced the prospect of economic sanctions in 1991.

A further concession is also embodied in the August, 1998 Security Council Resolution, namely that UN Secretary General Kofi Annan would name international "observers" to "monitor" the Scottish judges' conduct of the trial. Whatever the individual qualifications of the five trial observers named to date -- and one of them is reported to have served as lawyer for Libya's UN mission in New York -- the fact remains that this concession is an insult to the entire Scottish judicial system. The idea that Scottish justice may not be up to Libya's high standards of due process, or that there is some "international" standard that is somehow better than Scotland's (and, implicitly, America's) should have been flatly unacceptable to the Administration.

An equally bad precedent is that the United States and the United Kingdom also conceded that, if convicted and imprisoned, the defendants would be "monitored" by the United Nations. Perhaps Gadhafi is unfamiliar with the concept, but in nations where the rule of law prevails, prisoners generally are required to be treated humanely and are allowed to consult with counsel, to practice their religions, to receive legitimate visitors, and the like. For understandable security reasons, prisoners are not treated uniformly. Convicted murderers do face different circumstances than tax evaders. Nonetheless, the United Kingdom still qualifies as a democratic, civilized-enough place that it can be expected to meet its own legal standards.

The notion that Scottish prisons might not meet Libyan norms is breathtaking. Bear in mind also that the United States is already under criticism at the United Nations for even permitting the death penalty, let alone the way it is administered. The Pan Am 103 precedent raises the prospect that controversial cases with the slightest international coloration will be subject to calls for UN monitoring or oversight. What seems at first like a slight concession to Gadhafi's peculiar sensitivities is actually a potentially open-ended invitation to global entanglement in our criminal justice system.

Finally, and worst of all, Secretary Albright and her diplomats acquiesced in a letter sent by Secretary General Kofi Annan to Gadhafi, which essentially guaranteed Gadhafi that he would not be linked to the murders at the trial. This letter (which has now apparently been classified by the Department of State) has never been made public, and it is unclear whether it was co-signed by American and British diplomats or simply "cleared" by them in draft. In any event, compounding her many other blunders, the Secretary has waged a full-scale war against the Pan Am 103 families, several Members of Congress, and numerous journalists who have been trying to obtain a copy of the Annan letter. This policy of compromising with Gadhafi but stonewalling American family members has only increased concerns about what the Annan letter actually says.

Based on revelations to the Pan Am 103 families before the Annan letter was classified, we can conclude with some confidence that the Secretary General has effectively insulated Gadhafi from criminal liability for the bombing, which many believe

he personally ordered. The Annan letter is said to promise Gadhafi that the prosecutors' conduct of the trial will in no way "undermine" the Libyan regime. It is inconceivable that our Department of Justice willingly agreed to limitations on the prosecutors, and Attorney General Janet Reno acknowledged as much last fall in a briefing to the Pan Am 103 families. Nonetheless, our diplomats have agreed that the public trial of the hit men will be limited by vague words that mean we may never learn the full story.

Certainly, the United States has, at times, decided not to proceed with criminal trials that might have had an adverse impact on national security. Because of concerns about protecting intelligence sources and methods, or because of overriding foreign policy priorities, even clearly winnable prosecutions have been abandoned. Such decisions reflect tough assessments as to when critical national interests legitimately trump criminal-justice priorities. But what the Clinton Administration has accepted here is something far different. Its concessions to Gadhafi (albeit through its chosen agent, the UN Secretary General) are made to a potential defendant, or at least a co-conspirator, in the murder that is the very subject of the investigation.

By knuckling under to Libya's demands, President Clinton has left to Scottish judges the ticklish job of adjudicating Libyan objections at trial to particular questions, witnesses or exhibits, any of which might be said to "undermine" the Libyan government. That is not only irresponsible, but disingenuous. On what basis could any common-law judge legitimately rule on such a fundamentally political question? Moreover, if the court rules "incorrectly" from Libya's perspective, is the deal off? Even worse, if the

court rules "correctly" from Libya's perspective, will the prosecution's case be fatally weakened, and the defendants walk? As a precedent for future negotiations with terrorists (which we supposedly abjure), this new "Gadhafi Clause" will become an irreducible minimum condition for regimes abetting violence.

Not only are our unilateral, unreciprocated concessions unwise in and of themselves, they also represent a series of small but continuing victories for Gadhafi in his unending efforts to "internationalize" the trial, and thus take it out of the purview of either Scottish or American justice. Gadhafi had consistently argued that the two Libyans he handed over could not get a "fair trial" from Scottish or American courts, and every concession made to this absurd contention strengthened the international perception that perhaps we were also unsure that they could receive a fair trial. Unfortunately, the pattern of American concessions we have seen here will inevitably be cited as a precedent in similar situations in the future, and therefore constitute yet another step on the treacherous path toward removing the responsibility for criminal justice from nation-states, and internationalizing it in potentially irresponsible and unaccountable hands.

4. The disintegration of American policy toward Libya means that the Administration has *no* policy if the Scottish judges at Camp Zeist acquit the Libyan defendants. This result is entirely possible, given the high standard of proof required for convictions, the lack of cooperation from the Libyan government, and the prosecutors' needs to shield sensitive intelligence sources and methods from exposure. A finding of "not guilty" (or a so-called "Scottish verdict") is

not the legal or moral equivalent of finding the defendants "innocent," but no one will recognize that distinction in the trial's aftermath. Gadhafi and his fellow thugs will have beaten the judicial system, and Secretary Albright can proceed toward diplomatic normalization unencumbered by any further obligations to the Pan Am 103 families.

Indeed, even if the two intelligence operatives are convicted, Gadhafi will almost certainly escape prosecution, even though he is widely believed to have given the direct order that led to Pan Am 103's destruction. This fact alone demonstrates the intellectual and political poverty of the Administration's position.

Inexplicably, only a few members of Congress have even monitored, let alone opposed, the collapse of America's opposition to Libya's outrages. Nor has it been the subject of debate in the presidential campaign, at least until now. While the defendants on trial at Camp Zeist may ultimately be convicted, there is no prospect of adequate justice while Gadhafi remains untouched. Since that seems sadly likely, we need a larger debate about how America asserts its interests and protects its citizens from attack, by terrorists or anyone else. This requires an American posture that accepts military force rather than prosecution as the preferred response, that is willing and even inclined to respond unilaterally to be effective, and that has an attention span long enough to allow us to win through to vindication. Questions of international terrorism -- and Libya particularly -- fully warrant presidential campaign debate.